IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2472 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYABEN U PATEL - Petitioner(s)

Versus

K S B TECHNIAL INSTUTUTE - Respondent(s)

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Appearance :

MR MUKUL SINHA for Petitioner(s) : 1,
MR DG CHAUHAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 21/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and award dated 28.11.1996 passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No.1963 of 1991, whereby the Labour Court has

awarded Rs.15000/- towards compensation and has rejected the prayer for reinstatement to the original post.

2. It is the case of the petitioner that the petitioner was working as a part-time sweeper in K.S.B.Technical Institute till she was terminated from her services by order dated 08.06.1991. It is the case of the petitioner that the petitioner was paid Rs.700/- per month as the salary at the time of termination and before terminating her services, the respondent – institute has not complied with the mandatory provisions of Section 25-F and 25-G of the Industrial Disputes Act. Ultimately, the petitioner had raised industrial dispute which came to be referred to the Labour Court, Ahmedabad by way of Reference (LCA) No. 1963 of 1991. Ultimately, the Labour Court, vide judgment and award dated 28.11.1996 rejected the prayer for reinstatement and had awarded Rs.15000/- in favour of the petitioner being the remuneration.

3. It is submitted by Mr.Mankad, learned advocate for the petitioner that once the Labour Court has come to the conclusion that the order of termination is bad on the ground of breach of Sections 25-F and 25-G of the Act, as a rule the employee should be reinstated with full

back wages. He further submitted that no reason has been given by the Labour Court to carve the exception to the said rule and the reasoning of the Labour Court that her earlier application for regularization was not accepted by the office of the Director of Employment and Training is wholly irrelevant and can have no bearing on the issue of reinstatement. He submitted that the petitioner had put in several years of service without any break and the Labour Court itself has come to the conclusion that the termination was not in accordance with law and the petitioner was not paid the statutory dues. He submitted that merely because the Charity Commissioner had raised the objection in past regarding the payment to the part time sweeper, the Labour Court, therefore, should not have felt so powerless so as to deny the relief of reinstatement.

4. So far as back wages are concerned, it is submitted by Mr.Mankad that the petitioner had led the evidence to show that she had not been employed within the period of termination and being an elderly woman she was not in a position to get any alternative job. He submitted that even if it is assumed without admitting that the Labour Court is justified in awarding the compensation in lieu of reinstatement with back wages, the sum of

Rs.50,000/- is wholly inadequate and the quantum of compensation has no reasonable bearing qua the damages suffered by the petitioner. He submitted that the last pay drawn by the petitioner was Rs.700/- per month and the back wages alone on the basis of the last pay drawn would come to around Rs.54,000/-. He submitted that therefore, minimum amount which ought to have been awarded as compensation in lieu of reinstatement with back wages would be a sum of Rs.1,10,000/-. It is, therefore, requested to allow the present petition.

5. On the other hand, Mr.D.G.Chauhan, learned advocate appearing for the respondent has submitted that the petitioner was engaged as a part-time sweeper and since the post of part-time sweeper was abolished by order dated 08.06.1991, the services of the petitioner were terminated after complying with the provisions of Section 25-F of the Act. He submitted that the respondent has not violated the provisions of Section 25-G and H of the I.D.Act. He submitted that the Labour Court is justified in not awarding the back wages and has rightly awarded the compensation of Rs.15,000/-. He, therefore, submitted that the petition is required to be dismissed.

6. I have given my thoughtful consideration to the

submissions made by the learned advocate appearing for the parties and the material placed on record.

7. It is required to be noted that the Labour Court has come to the conclusion that the petitioner was the employee of the respondent and has negatived the contention of the respondent that the petitioner is not the employee of the respondent. The Labour Court has also come to the conclusion that the respondent had not paid to the petitioner here legal dues and appropriate retrenchment allowance at the time of terminating her services. Once the Labour Court, after having held that the order of termination is bad on the ground of breach of the provisions of the Act, the Labour Court ought to have passed the order directing the respondent to reinstate the petitioner in service. Further, when the petitioner has led the evidence before the Labour Court that she is an elderly woman and could not get any job and also that she was not gainfully employed, the Labour Court ought to have granted the back wages in favour of the petitioner. But, as stated above, the Labour Court has awarded compensation of Rs.15,000/- in lieu of reinstatement and back wages. Considering the facts and circumstances of the case, more particularly, the fact that the petitioner had rendered considerable

period of service and her services have been terminated wrongfully and at the time of termination of her service, the last pay drawn by her was Rs.700/- per month as submitted by the learned advocate for the petitioner, the Labour Court ought to have awarded more compensation than Rs.15,000/- in lieu of reinstatement and back wages. However, as per the submission of learned advocate appearing for the respondent, the petitioner was paid fix pay of Rs.110/- per month.

8. Considering the fact that the petitioner had put in several years of services and her termination was not in accordance with law, her termination is bad and illegal and the same has to be set aside. Since the petitioner has been terminated since 8.6.1991, I am not inclined to direct reinstatement of the petitioner but considering the facts and circumstances of the case, the respondent is directed to pay Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of reinstatement and full back wages. It is clarified that this amount is being paid by way of full and final settlement of all the claims of the petitioner. The said amount shall be paid to the petitioner by the respondent within two months from today.

9. Under the circumstances, the impugned judgment and

award dated 28.11.1996 is modified to the extent indicated hereinabove. The petition is partly allowed. Rule is made absolute to the aforesaid extent.

(SHARAD D DAVE, J)

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